

(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION			PUBLIC MATTER
Counsel For The State Bar Anthony J. Garcia Deputy Trial Counsel Office of the Chief Trial Counsel 1149 S. Hill Street, 10th Fl. Los Angeles, CA 90015 Telephone: (213) 765-1089 Bar # 171419	Case Number(s): 10-O-11214	For Court use only <div style="text-align: center;"> FILED MAY 10 2012 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>	
In Pro Per Respondent Michael Jude O'Brien PO Box 1409 Upland, CA 91785 Telephone: (626) 966-5663 Bar # 147414	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING		
In the Matter of: MICHAEL JUDE O'BRIEN Bar # 147414 A Member of the State Bar of California (Respondent)	ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 11, 1990.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 9 pages, not including the order.



(Do not write above this line.)

- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - ☐ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: 2013, 2014. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline** [see standard 1.2(f)]
 - (a) ☒ State Bar Court case # of prior case 07-O-13150, 07-O-13198, 07-O-13379.
 - (b) ☒ Date prior discipline effective January 27, 2012.
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: 5-200(A), 5-200(B), 6068(d), 6068(g).
 - (d) ☒ Degree of prior discipline six (6) months actual suspension.
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(Do not write above this line.)

- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent has admitted culpability at this early stage of the proceedings. He is receiving substantial mitigation for candor and cooperation.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(Do not write above this line.)

- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of two (2) years.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of one (1) year.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(Do not write above this line.)

- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☐ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☒ No Ethics School recommended. Reason: Respondent will take Ethics School in 2012 as a requirement of the discipline entered in case no. 07-O-13150.
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

(Do not write above this line.)

- (1) ☐ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- ☒ No MPRE recommended. Reason: Respondent will take the MPRE in 2012 as a requirement of the discipline entered in case no. 07-O-13150.
- (2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☒ **Other Conditions:** Respondent has agreed to quitclaim the property located at 1510 Farmstead Ave, Hacienda Heights, CA back to Buddy Price, to account for all rental income he has received from the tenant at 1510 Farmstead Ave, Hacienda Heights, CA , and to remit to Buddy Price all rental income that he has received from the tenant at 1510 Farmstead Avenue, Hacienda Heights, CA except for that portion of the rental income that has been used to pay the mortgage and/or other indentifiable and documented expenses. Respondent agrees to complete these tasks no later than 30 days after the effective date of the Supreme Court's Order in this matter.

ATTACHMENT TO STIPULATION
RE: FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Michael J. O'Brien

CASE NUMBER: 10-O-11214

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 10-O-11214 (Complainant: Buddy Price)

FACTS:

1. In September 2007, Buddy Price and Judith Price (deceased) refinanced their home using an Adjustable Rate Mortgage (ARM) to borrow \$328,250. The terms of the ARM required them to pay \$108.73 per month for the five-year term of the loan. The unpaid interest was added to the principal balance each month. At the end of five years, the ARM loan would reset and, after the loan reset, the Prices' loan payments would include principal and interest.

2. In September 2008, the Prices became concerned that they would not be able to afford their loan payments after the ARM loan reset and the Prices looked for a lawyer to help them with their ARM loan.

3. On September 24, 2008, the Prices met with Respondent for a legal consultation. Respondent advised the Prices that he could help them and suggested that they sell the Farmstead home for \$1 to a company that he and his sister were forming.

4. The Prices understood that by selling the Farmstead home to Respondent, they would be relieved of further financial responsibility on the Farmstead home.

5. On September 24, 2008, Respondent drafted an agreement called the "Supplemental Fee Agreement For Use With Deeds of Trust RPC-3-300" (Supplemental Fee Agreement). Respondent delivered the Supplemental Fee Agreement to the Prices for their signatures. According to the terms of the Supplemental Fee Agreement, the Prices elected to sell to broker/attorney/sister/assignee Real Property for \$1.00 with no guarantee there would not be a foreclosure. The Supplemental Fee Agreement stated that the Prices had a right to consult with an independent attorney/ broker with regard to the payment of fees and the execution of the sales deed.

6. On September 24, 2008, the Prices signed the Supplemental Fee Agreement.

7. The Supplemental Fee Agreement was not fair to the Prices. The terms of the Supplemental Fee Agreement transferred title to the Farmstead home to Respondent and left the Prices with all of the risk and responsibilities of the ARM loan.

8. The Supplemental Fee Agreement did not fully disclose all of the terms of the transaction. For example, it did not state that the Prices were still legally responsible for the ARM loan, it was vague and ambiguous regarding who purchased the Farmstead home, it was silent regarding the purchaser's obligations related to the Farmstead home, and it failed to disclose Respondent's business and legal relationship with the purchaser, Respondent's sister.

9. On June 14, 2009, the Prices met with Respondent who had prepared a contract and Quitclaim Deed for their signature. The Prices signed the Quitclaim Deed and conveyed the Farmstead home to an entity named Hauscara LLC. Hauscara LLC is owned by Respondent and his sister. That same day, Respondent gave the Prices a \$1.00 bill.

10. In the summer of 2009, with Respondent's knowledge and permission, Gerardo Zepeda and

would live in the house, pay the mortgage, the insurance premiums, and make necessary repairs. The agreement anticipated that Zepeda would eventually buy the Farmstead home.

11. On June 20, 2010, the Prices' lender contacted them about unpaid property taxes on the Farmstead home.

12. In July 2010, the Prices learned that they were still legally responsible for the ARM loan. They consequently learned that Respondent had not yet filed the Quitclaim Deed they signed on or about June 14, 2009.

13. On or about November 9, 2010, at the Prices insistence, Respondent recorded the Quitclaim deed for the Farmstead home.

14. In June 2011, Zepeda moved out of the Farmstead home.

15. In July 2011, Lorenzo Morales moved into the Farmstead home. Morales pays \$1,400 in monthly rent to Respondent and/or Respondent's sister. Out of these funds, Respondent pays the mortgage, \$312.32/month, and insurance, \$1,035/year.

16. To date, Morales is living in the Farmstead home. All mortgage payments and insurance premiums have been paid.

CONCLUSION OF LAW:

17. By entering into an agreement with the Prices to purchase the Farmstead home that left with the Prices with all the risk and responsibilities of the ARM loan, by not explaining to the Prices that they were still legally responsible for the ARM loan, by not clearly identifying who purchased the Farmstead home, not identifying the purchaser's obligations in the sale of the Farmstead home, and by not disclosing Respondent's business and legal relationship was with his sister, Respondent entered into a business transaction with a client without complying with the requirements that the transaction or acquisition and its terms were fair and reasonable to the client and that the transaction or acquisition and its terms were fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client in willful violation of California Rules of Professional Conduct, rule 3-300.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was April 17, 2012.

AUTHORITIES SUPPORTING DISCIPLINE

Standards

Standard 1.7(a) which states that if a member has a prior discipline, the degree of discipline in the current proceeding shall be greater than the discipline imposed in the prior proceeding unless the prior discipline was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Standard 2.8 provides that, when a respondent is culpable of a violation of Rules of Professional Conduct, rule 3-300, that Respondent should be suspended unless the extent of Respondent's misconduct and the harm to the client are minimal, in which case, the degree of discipline shall be reproof.

(Do not write above this line.)

In the Matter of:
MICHAEL JUDE O'BRIEN

Case number(s):
10-O-11214

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

4/14/12
Date


Respondent's Signature

MICHAEL JUDE O'BRIEN
Print Name


Date


Respondent's Counsel Signature

Print Name

4/20/12
Date


Deputy Trial Counsel's Signature

ANTHONY J. GARCIA
Print Name

(Do not write above this line.)

In the Matter of:
MICHAEL JUDE O'BRIEN

Case Number(s):
10-O-11214

ACTUAL SUSPENSION ORDER

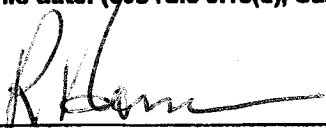
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)

Date

5/7/12


RICHARD A. HONN
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 10, 2012, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

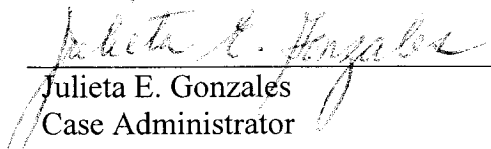
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICHAEL J O'BRIEN ESQ
PO BOX 1409
UPLAND, CA 91785

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Anthony J. Garcia, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 10, 2012.



Julieta E. Gonzales
Case Administrator
State Bar Court